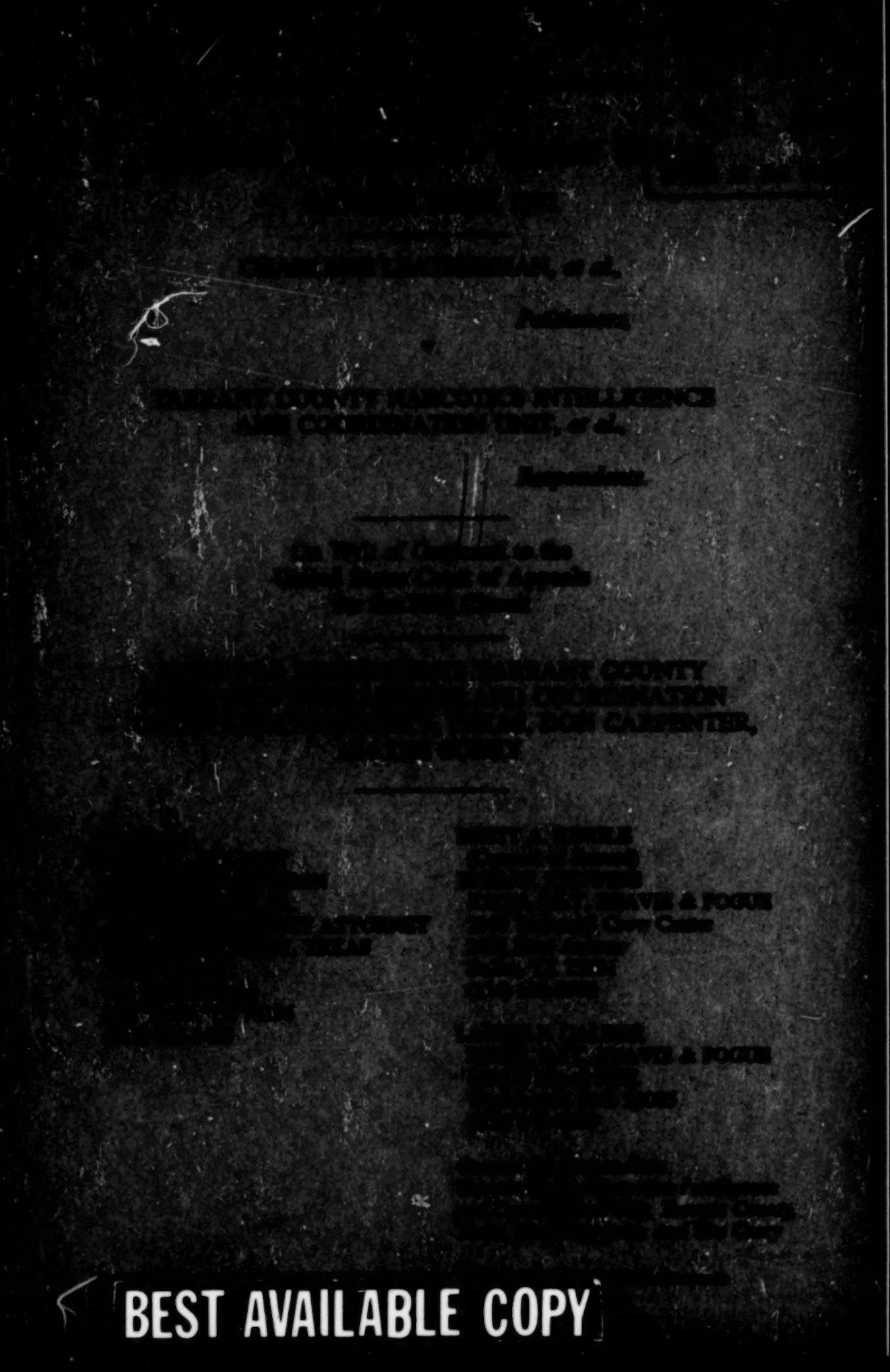

BEST AVAILABLE COPY

## QUESTIONS PRESENTED

1. Whether a complaint against a municipality under 42 U.S.C. § 1983 that alleges no factual grounds from which a court can infer that a municipal policy caused the alleged constitutional violation states a claim upon which relief can be granted within the meaning of Rule 12(b)(6) of the Federal Rules of Civil Procedure.

2. Whether a requirement that, in order to survive a Rule 12(b)(6) motion to dismiss, a complaint against a municipality under 42 U.S.C. § 1983 must allege facts from which a court can infer that a municipal policy caused the alleged constitutional violation contravenes the Rules Enabling Act.

## TABLE OF CONTENTS

## TABLE OF CONTENTS - Continued







## TABLE OF AUTHORITIES

## TABLE OF AUTHORITIES - Continued





## TABLE OF AUTHORITIES - Continued

## TABLE OF AUTHORITIES - Continued





## TABLE OF AUTHORITIES - Continued

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1992

---

No. 91-1657

---

CHARLENE LEATHERMAN, *et al.*,

*Petitioners,*

v.

TARRANT COUNTY NARCOTICS INTELLIGENCE AND COORDINATION UNIT, *et al.*,

*Respondents.*

---

**On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

---

## BRIEF FOR RESPONDENTS TARRANT COUNTY NARCOTICS INTELLIGENCE AND COORDINATION UNIT, TARRANT COUNTY, TEXAS, DON CARPENTER, AND TIM CURRY

---

## STATEMENT

This § 1983[1] action arises out of two separate incidents

---

[1] 42 U.S.C. § 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

involving the execution of search warrants by law enforcement officers with the Tarrant County Narcotics Intelligence and Coordination Unit ("TCNICU").

The first incident on which petitioners brought suit involved TCNICU's execution of a search warrant for narcotics in petitioners Charlene and Kenneth Leatherman's residence. After procuring the warrant, the officers went to the Leatherman property, which was unoccupied, except for two dogs. In the course of conducting their search, the officers shot the dogs. The officers did not find any narcotics or the drug lab they sought. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 954 F.2d 1054, 1056 (5th Cir. 1992) (Cert. Pet. App. 1a, 4a).

The second incident involved a search warrant for illegal drugs at the Anderts' property.[2] When the officers entered the house, they found Gerald Andert and his family. After entry one of the officers struck Mr. Andert on the head. The search did not turn up any narcotics. *Id.* at 1056 (Cert. Pet. App. 5a).

On November 22, 1989, petitioners Charlene and Kenneth Leatherman filed a complaint against TCNICU and Tarrant County in state court (J.A. 3).[3] The complaint alleged that TCNICU officers had detained the Leathermans and searched

---

rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[2] The officers had separately secured warrants for both the Leatherman and Andert homes because they had smelled a strong chemical odor associated with the manufacturing of amphetamines in the vicinity of those homes (J.A. 79, 100-01).

[3] The Andert petitioners, who were involved in the second search incident, did not join in the original complaint.



their residence without probable cause, and violated, among other rights, their rights under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. The complaint further alleged that "[p]laintiffs have reason to believe" that, when the officers committed these alleged violations, they "were acting in accordance with official policy usage and custom of the TARRANT COUNTY NARCOTICS INTELLIGENCE AND COORDINATION UNIT of the Tarrant County District Attorney's office and were therefore in the course and scope of their duties as agents, servants, and/or employees of TARRANT COUNTY, TEXAS" (J.A. 6-7).

TCNICU removed the case to federal court and then moved for dismissal under Rule 12(b)(6) or for summary judgment under Rule 56 of the Federal Rules of Civil Procedure (J.A. 9). The district court dismissed the complaint (J.A. 19) and then vacated[4] that dismissal on the condition that the Leathermans amend their complaint (J.A. 26). The Leathermans filed an amended complaint on March 23, 1990, joining Gerald Andert, Kevin Lealos, Jerri Lealos, Pat Lealos, Donald Andert, and Lucy Andert as additional plaintiffs,[5] and Tim Curry and Don Carpenter (in

---

[4] The Leathermans had sought to vacate the prior Order of Dismissal and requested leave to amend in order "to conform to the technical pleading requirements under 42 U.S.C. Section 1983" (J.A. 24).

[5] The Andert petitioners had separately sued two of the individual officers, Greg Bewley and Larry Traweek, who had conducted the search, alleging the same constitutional violations. The case proceeded to a jury trial, at which the district court granted Officer Traweek a directed verdict and sustained the officer's qualified immunity claim. The case against Officer Bewley went to the jury, which found that petitioners had failed to prove that the officer had used excessive force and sustained the officer's qualified immunity defense. *See Andert v. Bewley*, CA4-91-068 (N.D. Tex. Apr. 21, 1992). The district court's order is attached as the Appendix to City of Grapevine Texas' Reprinted Brief in Opposition ("Grapevine Cert. Opp. App." 1). The legal effects of this are discussed in part III, *infra*.

their official capacities as Director of TCNICU and Sheriff, respectively, of Tarrant County), and the Cities of Lake Worth and Grapevine, Texas, as additional defendants (J.A. 28).

Other than the policy or practice of seeking and obtaining allegedly "invalid" search warrants based on an "odor associated" with clandestine drug manufacture, the only other allegations of unconstitutional policy were the following conclusory allegations related to allegedly inadequate training:

1. The Leathermans claimed that Tarrant County and TCNICU were liable under 42 U.S.C. § 1983 for an unreasonable search of their premises because:

> [Defendants] failed to formulate and implement an adequate policy to train [their] officers on the proper manner in which to respond when confronted by family dogs when executing search warrants; and that in the light of the duties commonly assigned to officers who execute search warrants, the need for additional or different training was so obvious that the conduct of [Defendants], by and through [their] official policy maker[s] [Defendants Curry and Carpenter], demonstrates a deliberate indifference to the Constitutional rights of persons likely to be affected by such failure to train. Amd. Cpl. ¶¶ 23-24 (J.A. 37-38).

2. Both groups of petitioners also alleged generally:

> [T]hat [Defendants] failed to formulate and implement an adequate policy to train [their] officers on the Constitutional limitations restricting the manner in which search warrants may be executed; and that in the light of the duties commonly assigned to officers who execute search warrants, the need for additional or different training was so obvious that the conduct of [Defendants], by and through [their] official policy maker[s] [Defendants Curry and Carpenter], demonstrates a deliberate indifference to the Constitutional rights of persons likely to be affected by such failure to train. Amd. Cpl. ¶¶ 26-27; 31-33 (J.A. 39-40; 43-45).



All of petitioners' allegations against the municipal defendants were similarly conclusory and devoid of factual support. *See* Amd. Cpl. ¶¶ 24-28, 31-34; 36-38 (J.A. 38-41, 43-45, 46-48).

Respondents (except Lake Worth) moved to dismiss the amended complaint under Rule 12(b)(6). Tarrant County, TCNICU, Tim Curry, and Don Carpenter also moved for summary judgment under Rule 56. The district court granted all of the motions and ordered *sua sponte* that the complaint against Lake Worth be dismissed. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 755 F. Supp. 726, 727 (N.D. Tex. 1991) (Cert. Pet. App. 25a, 26a).

The district court emphasized that the amended complaint did not satisfy the Fifth Circuit's requirement that § 1983 complaints set forth the facts upon which the claim rests:

> The inadequate training allegations are inspired by the holding of the Supreme Court in *City of Canton v. Harris*, 489 U.S. 378 (1989). Plaintiffs allege, in a conclusionary way, the elements of a § 1983 inadequate training cause of action, as defined in *City of Canton*, against each of the public entity defendants.

*Leatherman*, 755 F. Supp. at 729 (Cert. Pet. App. 33a-34a). The court further noted that the petitioners' "custom and practice" allegations relating to odor-based search warrants simply incorporated the words from *Monell v. New York City Dep't of Social Services*, 436 U.S. 658 (1978), that were relevant to that cause of action. *Leatherman*, 755 F. Supp. at 729 (Cert. Pet. App. 34a). Because the complaint's allegations were "blunderbuss in character and describe[d] only isolated incidents 'decked out with general claims of inadequate training . . . .' and the like," *id.* at 730 (Cert. Pet. App. 38a) (citation omitted), the

district court held that under the Fifth Circuit's pleading requirements the complaint should be dismissed for failure to state a claim.

The district court also granted respondents' summary judgment motion because petitioners' affidavits, which were the only evidence that petitioners had offered, "shed no light whatsoever on the factors that are so crucial to establishment of § 1983 liability against a public entity." *Id.* at 733 (Cert. Pet. App. 48a). The district court was also unpersuaded by petitioners' contentions that they needed additional discovery. The court observed that, although petitioners had had "ample opportunity to engage in full discovery" since they filed suit in December 1989, the only discovery request that they had made was limited to the results of TCNICU's execution of odor-based search warrants. *Id.* (Cert. Pet. App. 52a). Thus, the court concluded: "Plaintiffs simply have not come forward with any evidence to satisfy the summary judgment burden that was cast on them once defendants made their Rule 56 challenge." *Id.* at 733 (Cert. Pet. App. 48a-49a).

The Fifth Circuit affirmed the district court's dismissal of petitioners' complaint under Rule 12(b)(6). *Leatherman*, 954 F.2d at 1058 (Cert. Pet. App. 14a). The court explained that in § 1983 cases, it applied a so-called "heightened pleading requirement," which had originated in *Elliott v. Perez*, 751 F.2d 1472 (5th Cir. 1985), a case involving claims against state actors in their official capacities. The requirement has also been applied to claims against defendant officials with qualified immunity defenses, *see, e.g., Jacquez v. Procunier*, 801 F.2d 789, 791-92 (5th Cir. 1986), and to claims against municipal defendants, *see, e.g., Palmer v. City of San Antonio*, 810 F.2d 514, 516-17 (5th Cir. 1987). Under this rule, a § 1983 claim against a municipal defendant must allege facts "that support the requisite allegation that the municipality engaged in a policy or custom for which it can be held responsible." *Leatherman*, 954 F.2d at 1055 (Cert. Pet. App. 2a).



The Fifth Circuit held that "plaintiffs' complaint falls short of alleging the requisite facts to establish a policy of inadequate training." *Id.* at 1058 (Cert. Pet. App. 12a):

> Where, as here, a lawsuit brought against a municipality is predicated on inadequate training of its police officers, this circuit has cautioned that "to make such a showing in such a case, there would have to be demonstrated 'at least a pattern of similar incidents in which the citizens were injured' . . . [in order] to establish the official policy requisite to municipal liability under section 1983."

*Id.* (Cert. Pet. App. 12a-13a) (citations omitted). The court observed that: "While plaintiffs' complaint sets forth facts concerning the police misconduct in great detail, it fails to state any facts with respect to the adequacy (or inadequacy) of the police training." *Id.*[6]

## SUMMARY OF ARGUMENT

The pleading requirement applied by the Fifth Circuit in this case required petitioners to plead the grounds upon which their claims rest in compliance with the dictates of *Conley v. Gibson*, 355 U.S. 41 (1957), and Rules 8 and 11 of the Federal Rules of Civil Procedure as construed by this Court. Because petitioners' challenge rests wholly on their incorrect assumption that the Fifth Circuit "depart[ed] from the rule announced in *Conley*" (Pet. Br. at 16), it must fail.

---

[6] The court did not consider relevant Leatherman's allegation that an officer had said it was "standard procedure" to shoot dogs. The court explained that the allegation "does not establish that the municipalities had a policy of killing all dogs during a search, or that the municipalities failed to adequately train officers in appropriately responding to animals encountered during a search." *Id.* at 1056 n.2 (Cert. Pet. App. 6a). Petitioners do not challenge this conclusion in this Court.

The Fifth Circuit imposed no "heightened" obligation on petitioners when it required that they plead "facts that support the requisite allegation that the municipality engaged in a policy or custom for which it can be held responsible." *Leatherman*, 954 F.2d at 1055.

To comply with the pleading requirement as articulated by the Fifth Circuit in this case, a plaintiff alleging that a municipality is directly liable for pursuing a policy of failing to train its police officers must plead more than one incident of the same allegedly unconstitutional conduct. This requirement is consistent with this Court's holding that "[p]roof of a single incident of unconstitutional activity is not sufficient to prove liability under *Monell*, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy . . ." *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24 (1985) (plurality opinion); *id.* at 831 (Brennan, J., concurring).

Where a plaintiff's pre-filing investigation pursuant to Rule 11 of the Federal Rules of Civil Procedure has revealed neither the existence of a municipal policy nor a second incident of the allegedly unconstitutional conduct about which he complains, no cognizable claim of municipal liability under §1983 can be pleaded and no relief can be granted. The Fifth Circuit's pleading requirement recognizes this reality. Any relaxation of the pleading requirement applied in this case would subject municipalities to claims that they are liable for the acts of their employees -- liability to which municipalities have never been subjected. Dismissing such cases implements the salutary policy announced by this Court in other contexts -- a party who is immune from liability must also be immune from suit.

Dismissing such cases also does not run afoul of the Rules Enabling Act. *See* 28 U.S.C. § 2072 (1988). As applied by the Fifth Circuit, Rule 8 is a rule of "practice and procedure" which effects substantive rights only incidentally. *See Burlington Northern Railroad Co. v. Woods*, 480 U.S. 1, 5 (1987). Like



Rule 11, Rule 8 "is reasonably necessary to maintain the integrity of the system of federal practice and procedure." *Business Guides, Inc. v. Chromatic Communications Enter., Inc.*, 111 S. Ct. 922, 934 (1991).

Even if the Fifth Circuit's reasons for dismissing the complaint were improper, petitioners are not entitled to proceed with their claims based on the search of the Andert residence. They have already lost a jury trial on their underlying constitutional claims against the police officers. Their § 1983 claims against the municipal defendants are therefore barred.

## ARGUMENT

### I. A COMPLAINT AGAINST A MUNICIPALITY UNDER 42 U.S.C. § 1983 THAT ALLEGES NO FACTUAL GROUNDS FROM WHICH A COURT CAN INFER THAT A MUNICIPAL POLICY CAUSED THE ALLEGED CONSTITUTIONAL VIOLATION DOES NOT STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

The Fifth Circuit affirmed the dismissal of petitioners' amended complaint, stressing that municipalities cannot be held liable under 42 U.S.C. § 1983 on a *respondeat superior* theory, and direct municipal liability cannot be inferred from a single instance of allegedly unconstitutional conduct. *Leatherman*, 954 F.2d at 1058 (Cert. Pet. App. 12a-13a). The Fifth Circuit properly applied the Federal Rules of Civil Procedure, which require that a complaint give fair notice of the grounds upon which a claim rests.

In this case the Fifth Circuit required nothing more than that petitioners plead the grounds upon which their claims were based in accordance with Rule 8, as defined by *Conley v. Gibson*, 355 U.S. 41 (1957), in the context of a § 1983 case against a municipality. Applied to this class of § 1983 claims, the Fifth

Circuit's so-called "heightened" pleading requirement is a misnomer.[7] Therefore, petitioners are incorrect in arguing that the Fifth Circuit has imposed on plaintiffs asserting § 1983 claims against municipalities a pleading obligation that exceeds the requirements of Rule 8.

### A. The Federal Rules of Civil Procedure Require A Plaintiff To Plead Facts From Which A Court Can Infer A Legally Cognizable Claim.

#### 1. Rule 8 Requires That the Complaint Set Out Facts Upon Which the Claim Rests.

Rule 8(a)(2) of the Federal Rules requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." In *Conley v. Gibson*, the Court explained the meaning of that requirement:

> [T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant *fair notice* of what the plaintiff's claim is and *the grounds upon which it rests*.

355 U.S. at 47 (emphasis added); *see also Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 149 n.3 (1984). To give "fair notice" of "the grounds upon" which a claim rests, a complaint must contain more than an unadorned incantation of the

---

[7] In *Siegert v. Gilley*, 111 S. Ct. 1789 (1991), this Court considered, but did not decide, the validity of the District of Columbia Circuit's "heightened" pleading requirement as applied to cases in which defendants have a potential qualified immunity defense. The Court need not resolve the appropriate pleading requirement for qualified immunity cases here. *See infra* p. 25-26.



applicable legal standards:[8] A complaint must give "'sufficient detail . . . so that the defendant, and the court, can obtain a fair idea of what the plaintiff is complaining, and can see that there is some legal basis for recovery.'" *Davis v. Passman*, 442 U.S. 228, 237 n.15 (1979) (citations omitted).[9]

---

[8] As the 1955 Advisory Committee explained in its proposed notes to Rule 8:

> "That Rule 8(a) envisages the statement of circumstances, occurrences, and events in support of the claim presented is clearly indicated not only by the forms appended to the rules showing what should be considered as sufficient compliance with the rule, but also by other intermeshing rules . . . . The decision in *Dioguardi v. Durning*, 139 F.2d 774 (2d Cir. 1944), to which proponents of an amendment to Rule 8(a) have especially referred, was not based on any holding that a pleader is not required to supply information disclosing a ground for relief. The complaint in that case stated a plethora of facts and the court so construed them as to sustain the validity of the pleading."
>
> 5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1201 at 67 n.11 (1990) (quoting Advisory Committee on Rules for Civil Procedure, *Report of the Advisory Committee* (Oct. 1955)).

[9] *See also Papasan v. Allain*, 478 U.S. 265, 274 (1986) (court is not "bound to accept as true a legal conclusion couched as a factual allegation"). As the lower courts have explained, a complaint must not only "provide notice of the circumstances which give rise to the claim," it must also "set forth sufficient information to outline elements of [the] claim or to permit inferences to be drawn that these elements exist." *Walker v. South Central Bell Tel. Co.*, 904 F.2d 275, 277 (5th Cir. 1990) (citation omitted); *see also The Dartmouth Review v. Dartmouth College*, 889 F.2d 13, 16 (1st Cir. 1989); *St. Josephs Hosp. v. Hospital Corp. of America*, 795 F.2d 948, 954 (11th Cir. 1986); *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984), *cert. denied*, 470 U.S. 1054 (1985); *Chahal v. Paine Webber, Inc.*, 725 F.2d

**2. The Adequacy of a Complaint Must Be Evaluated in Light of Applicable Law.**

The degree of factual specificity that Rule 8 requires varies with each complaint, for "what constitutes a 'short and plain statement' depends on the circumstances of the [particular] case." 2A James W. Moore & Jo D. Lucas, *Moore's Federal Practice* ¶ 8.13, at 8-57 (1992). Indeed, just as "a lawyer must know what the law is in order to determine whether a colorable claim exists, and if so, what facts are necessary to state a cause of action," *Bounds v. Smith*, 430 U.S. 817, 825 (1977), so must a court evaluate the factual sufficiency of a complaint in the context of the applicable rules of law.[10] "In [an antitrust] case of [great] magnitude," for example, "a district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed." *Associated General Contractors, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 528 n.17 (1983).[11] And to prevent

---

20, 23-24 (2d Cir. 1984); *Rhodes v. Robinson*, 612 F.2d 766, 772 (3d Cir. 1979); *Wolman v. Tose*, 467 F.2d 29, 33 n.5 (4th Cir. 1972); *Kwoun v. Southeast Missouri Professional Standards Review Org.*, 622 F. Supp. 520, 524 (E.D. Mo. 1985), *aff'd*, 811 F.2d 401 (8th Cir. 1987), *cert. denied*, 486 U.S. 1022 (1988); 5 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1216, at 159 (1990).

[10] *Compare Hishon v. King & Spaulding*, 467 U.S. 69 (1984) (analyzing a Title VII complaint) *with Siegert v. Gilley*, 111 S. Ct. 1789 (1991) (determining adequacy of a § 1983 complaint).

[11] *Cf. McLain v. Real Estate Bd of New Orleans, Inc.*, 444 U.S. 232, 242 (1980) ("To establish [antitrust] jurisdiction a plaintiff must allege the critical [interstate commerce] relationship in the pleadings and if these allegations are controverted must proceed to demonstrate by submission of evidence beyond the pleadings that the defendants' activity is itself in interstate commerce or, if it is local in nature, that it has an effect on some other appreciable activity demonstrably in interstate commerce.").



dismissal for lack of standing, a "complainant [must] clearly . . . allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." *Renne v. Geary*, 111 S. Ct. 2331, 2336 (1991); *see also, e.g., Warth v. Seldin*, 422 U.S. 490, 501 (1975) ("It is within the trial court's power to allow or to require the plaintiff to supply . . . further particularized allegations of fact deemed supportive of plaintiff's standing").[12] Where the governing substantive standards are either complex or stringent, the applicable pleading standards are necessarily more demanding. This is not to say that there is a "special rule" for each case, but only that the application of the rule is flexibly applied to these more demanding situations.[13]

---

[12] Decisions in the lower courts also illustrate how the requirements of Rule 8 vary with the substantive context in which they are applied. *See, e.g., Commonwealth of PA ex rel. Zimmerman v. Pepsico, Inc.*, 836 F.2d 173, 179-83 (3d Cir. 1988) (pleading requirement for antitrust claim); *Elliott v. Foufas*, 867 F.2d 877, 881 (5th Cir. 1989) (pleading requirement for RICO claim); *Fullman v. Graddick*, 739 F.2d 553, 557 (11th Cir. 1984) (pleading requirement for conspiracy claim); *Shemtob v. Shearson, Hammill & Co., Inc.*, 448 F.2d 442, 445 (2d Cir. 1971) (pleading requirement for securities claim).

[13] It therefore is not surprising that the courts of appeals deem inadequate conclusory allegations in many types of § 1983 claims. *See, e.g., Hobson v. Wilson*, 737 F.2d 1, 29-31 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1084 (1985); *Dewey v. University of New Hampshire*, 694 F.2d 1, 3 (1st Cir. 1982), *cert. denied*, 461 U.S. 944 (1983); *Alfaro Motors, Inc. v. Ward*, 814 F.2d 883, 887 (2d Cir. 1987); *Freedman v. City of Allentown*, 853 F.2d 1111, 1114-15 (3d Cir. 1988); *Revene v. Charles County Comm.*, 882 F.2d 870, 875 (4th Cir. 1989); *Elliott v. Perez*, 751 F.2d 1472, 1479 (5th Cir. 1985); *Chapman v. City of Detroit*, 808 F.2d 459, 465 (6th Cir. 1986); *Rodgers v. Lincoln Towing Serv., Inc.*, 771 F.2d 194, 202 (7th Cir. 1985); *Arnold v. Jones*, 891 F.2d 1370, 1373 n.3 (8th Cir. 1989); *Branch v. Tunnell*, 937 F.2d 1382, 1386 (9th Cir. 1991); *Sooner Prod. Co. v. McBride*, 708 F.2d 510, 512 (10th Cir. 1983); *Fullman v. Graddick*, 739 F.2d at 556-57.

### 3. Rule 11 Requires Investigation Prior to Filing Sufficient to Allow the Required Facts To Be Pleaded.

The obligations of plaintiffs seeking to prove difficult substantive claims arise before the complaint is filed. As amended in 1983, Rule 11 states in pertinent part:

> Every pleading, motion, and other paper of a party represented by an attorney shall be signed . . . . The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief *formed after reasonable inquiry it is well grounded in fact and is warranted by existing law* or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(emphasis added). The Advisory Committee's notes to the amended Rule 11 state that the "new language stresses the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule." Under the Rule, a plaintiff cannot properly file a complaint until he or she has conducted a reasonable inquiry which leads to the conclusion that each element of the claim is "well grounded in fact."

Plaintiffs must satisfy both the pleading and investigation requirements imposed by the Federal Rules of Civil Procedure for the particular claims alleged in their complaint. Failure to meet those requirements can result in dismissal of the complaint under Rule 12(b)(6). *See, e.g., Estelle v. Gamble*, 429 U.S. 97, 106 (1976) ("[i]n order to state a cognizable [§ 1983] claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs"); *Polk County v. Dodson*, 454 U.S. 312, 326 (1981) (plaintiff's § 1983



complaint failed to state a claim where "he failed to allege that [his asserted constitutional] deprivation was caused by any constitutionally forbidden rule or procedure"). Failure to meet these requirements can also result in the imposition of sanctions under Rule 11. *See Business Guides, Inc. v. Chromatic Communications Enter., Inc.*, 111 S. Ct. 922, 928 (1991) ("[A] party who signs a pleading or other paper without first conducting a reasonable inquiry shall be sanctioned.").

## B. Complaints Against Municipalities Under § 1983 Must Be Predicated On More Than A Theory Of *Respondeat Superior*.

The adequacy of petitioners' complaint in this case depends on the law governing § 1983 claims against municipalities. Because municipal defendants are immune from all *respondeat superior* liability, § 1983 complaints that allege facts amounting to nothing more than a *respondeat superior* theory cannot survive a motion to dismiss under Rule 12(b)(6).

### 1. Municipalities Are Absolutely Immune From *Respondeat Superior* Liability.

For over a century, municipalities continued to enjoy the immunity from § 1983 cases that they had from suits at common law. *See Monroe v. Pape*, 365 U.S. 167 (1961). Then, in *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978), this Court explained that Congress intended that a municipality could be sued under § 1983, but it "did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort." *Id.* at 691. The Court concluded that "a municipality cannot be held liable *solely* because it employs a tortfeasor -- or, in other words,

a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Id.*[14]

Under *Monell* a plaintiff must satisfy four requirements in order to prove a § 1983 claim against a municipality. As in any § 1983 case, the plaintiff must prove (1) a deprivation by a person of a federal right and (2) that the person acted under color of law. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The plaintiff must also show (3) that the deprivation was caused (4) by a municipal policy or custom. *See City of Canton v. Harris*, 489 U.S. 378, 385 (1989). By establishing these two additional requirements specifically for § 1983 actions against municipalities, *Monell* ensured that, "it is [only] when execution of a government's policy or custom . . . inflicts the injury that the government is [held] responsible under § 1983." 436 U.S. at 694.

*City of Oklahoma City v. Tuttle*, 471 U.S. 808 (1985), elaborated on *Monell*'s policy requirements in a "failure to train" case similar to the claim at issue here. *Tuttle* involved a shooting by a police officer in the course of investigating a robbery. The trial court had given a jury instruction that allowed the jury to conclude from a single incident of police misconduct that the municipality had failed to train its officers adequately, that its failure to do so amounted to deliberate indifference to the plaintiff's constitutional rights, and that the municipality should be held liable under § 1983. *Id.* at 813. In holding that the trial court's instruction was flawed, the plurality explained that more than a single incident was necessary to find a municipality's policy in violation of § 1983:

---

[14] Since *Monell*, this Court has "repeatedly reaffirmed" the immunity of municipalities from *respondeat* liability. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 122 (1988). Most recently, the Court unanimously did so in *Collins v. City of Harker Heights*, 112 S. Ct. 1061, 1067-68 (1992).



> where the policy relied upon is not itself unconstitutional, *considerably more proof than the single incident* will be necessary in every case to establish both the requisite fault on the part of the municipality, and the causal connection between the "policy" and the constitutional deprivation.

*Id.* at 824 (emphasis added). The concurring opinion agreed that a single incident of police misconduct is insufficient to establish a *Monell* claim. *Id.* at 831 (Brennan, J., concurring).

In *City of Canton v. Harris*, 489 U.S. 378, this Court specified the limited circumstances in which a municipality's failure to train its officers can amount to a municipal "policy" within the meaning of *Monell*. The Court concluded that:

> *Monell*'s rule that a city is not liable under § 1983 unless a municipal policy causes a constitutional deprivation will not be satisfied by merely alleging that the existing training program for a class of employees, such as police officers, represents a policy for which the city is responsible.

*Id.* at 389.

The Court held that a municipality's allegedly inadequate training program "may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the policy comes into contact." *Id.* at 388. The Court further stated that a plaintiff can establish a municipality's deliberate indifference in one of two ways: (1) when the municipality fails to train its officers properly to address an obvious, recurrent situation involving the serious risk of unconstitutional harm; or (2) when police "so often violate constitutional rights that the need for further training must have been plainly obvious to city policy makers." *Id.* at 390 n.10.[15]

---

[15] *See also id.* at 397-98 (O'Connor, J., concurring) (further elaborating on these alternate methods of proof).

*City of Canton* reiterated that a plaintiff must show that "the deficiency in training actually caused" the constitutional deprivation. *Id.* at 391; *see also Collins v. City of Harker Heights*, 112 S. Ct. 1061, 1067-68 (1992).

These stringent requirements reflect the enhanced importance of municipal defendants' *respondeat* immunity in "failure to train" cases. Any standard of fault less stringent than "deliberate indifference" would "engage the federal courts in an endless exercise of second-guessing municipal employee-training programs," an exercise which "the federal courts are ill-suited to undertake, as well as one that would implicate serious questions of federalism." *City of Canton*, 489 U.S. at 392. As Justice O'Connor's concurring opinion explained, requiring a "very close causal connection" between the failure to train and a constitutional violation avoids imposing additional "'prophylactic' duties on municipal governments only remotely connected to underlying constitutional requirements themselves." 489 U.S. at 395 (O'Connor, J., concurring).

Potential failure-to-train liability also poses a serious threat to the municipal treasury:

> As the authors of the Ku Klux Klan Act themselves realized, the resources of local government are not inexhaustible. The grave step of shifting of those resources to particular areas where constitutional violations are likely to result through the deterrent power of § 1983 should certainly not be taken on the basis of an isolated incident. If § 1983 and the Constitution require the city of Canton to provide detailed medical and psychological training to its police officers, or to station paramedics at its jails, other city services will necessarily suffer, including those with far more direct implications for the protection of constitutional rights.

*Id.* at 400 (O'Connor, J., concurring); *cf. City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981) (expressing concern



about "possible strain on local treasuries and therefore on services available to the public at large").

### 2. Municipal Defendants' Immunity From *Respondeat Superior* Liability Is Meaningless If They Are Required to Defend Suits Based on That Theory.

As this Court has made clear, immunity from liability necessarily includes immunity from suit. In *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), this Court announced an objective test for determining a government official's immunity from suit in order to ensure that "insubstantial claims [would] not proceed to trial." *Id.* at 816. Before *Harlow*, plaintiffs could create a factual issue on a government official's entitlement to immunity simply by alleging that the official had committed a wrong with "malice." *See Wood v. Strickland*, 420 U.S. 308, 313-14 (1975). By announcing a purely objective test in *Harlow*, under which government officials could enjoy qualified immunity as long as "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known," 457 U.S. at 817, this Court ensured that "many insubstantial claims" could be resolved on summary judgment. *Id.* The *Harlow* standard allowed the lower courts to effectuate this Court's admonition in *Butz v. Economou* that:

> Insubstantial lawsuits can be quickly terminated by federal courts alert to the possibilities of artful pleading. Unless the complaint states a compensable claim for relief under the Federal Constitution, it should not survive a motion to dismiss. Moreover, . . . damages suits concerning constitutional violations need not proceed to trial, but can be terminated on a properly supported motion for summary judgment based on the defense of immunity . . . . [F]irm application of the Federal Rules of Civil Procedure will ensure that federal officials are not harassed by frivolous lawsuits.

438 U.S. 478, 508-09 (1978). *Harlow* mandates that discovery not be allowed against officials "[u]ntil [the] threshold immunity question is resolved." 457 U.S. at 817-19.

Since *Harlow*, this Court has continued to insist that government officials enjoy the full scope of their qualified immunity without having to proceed through discovery or to trial.[16] In *Anderson v. Creighton*, 483 U.S. 635 (1987), for example, the Court announced that, in order to obtain discovery in qualified immunity cases, a plaintiff would have to plead the violation of clearly established rights at an acceptable level of specificity. Absent a specificity requirement, the Court explained:

> Plaintiffs would be able to convert the rule of qualified immunity that our cases plainly establish into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights. *Harlow* would be transformed from a guarantee of immunity into a rule of pleading.

*Id.* at 639.[17] *See also Siegert v. Gilley*, 111 S. Ct. at 1793

---

[16] *See, e.g., Davis v. Scherer*, 468 U.S. 183, 195-96 (1984) (refusing to allow violations of state procedures and laws to abrogate qualified immunity, in part because such considerations would make early disposition more difficult); *Mitchell v. Forsyth*, 472 U.S. 511, 526-27 (1985) (making an interlocutory appeal available for defendants whose qualified immunity defenses are denied); *Malley v. Briggs*, 475 U.S. 335, 345-46 (1986) (declining to engraft any *per se* exceptions upon *Harlow*'s general rule); *Hunter v. Bryant*, 112 S. Ct. 534, 536 (1991) (reiterating that qualified immunity issues must be decided well before trial).

[17] The Court explained that:

> [O]n remand, it should first be determined whether the actions the Creightons allege Anderson to have taken are actions that a reasonable officer could have believed lawful. If they are, then Anderson is entitled to dismissal prior to discovery. If they are not,



("One of the purposes of immunity, absolute or qualified, is to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn out lawsuit.").

In both theory and practice, qualified immunity from liability encompasses immunity from suit. If the immunity were less broad, "[i]nsubstantial lawsuits [could] undermine the effectiveness of government." *Harlow*, 457 U.S. at 819 n.35. Likewise, a municipal defendant's immunity from *respondeat superior* liability must include immunity from suit. A municipal government with limited resources is no more deserving of being "harassed by frivolous lawsuits" than its employees. *Cf. Butz*, 438 U.S. at 508. Extensive discovery is at least as "disruptive of effective government" when served on the local government itself as when discovery is directed to its officers. *Cf. Harlow*, 457 U.S. at 817. "[I]nsubstantial lawsuits undermine the effectiveness of government as contemplated by our constitutional structure," whether the defendant is a natural or municipal "person" under § 1983. *Cf. id.* at 819 n.35. Faced with an inadequately pled complaint, a municipality should neither be forced "to engage in the expensive and time consuming preparation to defend the suit on its merits," nor subjected to the "unwarranted demands customarily imposed upon those defending a long drawn out lawsuit." *Siegert*, 111 S. Ct. at 1793.

---

> and if the actions Anderson claims he took are different from those the Creightons allege (and are actions that a reasonable officer could have believed lawful), then discovery may be necessary before Anderson's motion for summary judgment on qualified immunity grounds can be resolved. Of course, any such discovery should be tailored specifically to the question of Anderson's qualified immunity.

*Id.* at 646 n.6.

### C. The Fifth Circuit's Pleading Requirement Properly Applies The Requirements of Rule 8 and Rule 11 of The Federal Rules of Civil Procedure to § 1983 Claims Against Municipalities.

A plaintiff in a § 1983 action who cannot allege the existence of a municipal policy that caused a violation of his or her constitutional rights must at least allege facts from which a "policy" of "deliberate indifference" causing the constitutional violation can be inferred; he must show "[c]onsiderably more than [a] single incident" of the allegedly wrongful conduct by municipal employees. *See Tuttle*, 471 U.S. at 824; *id.* at 831 (Brennan, J., concurring). Recognizing this, the Fifth Circuit requires that § 1983 plaintiffs allege "a pattern of similar incidents" involving municipal employees. *Leatherman*, 954 F.2d at 1058 (citations omitted) (Cert. Pet. App. 12a-13a); *see also, e.g., Fraire v. City of Arlington*, 957 F.2d 1268, 1278 (5th Cir. 1992); *Palmer v. City of San Antonio*, 810 F.2d at 516. The Seventh Circuit has noted that a lesser demand would require a "leap in logic" that courts should be "unwilling to take." *Caldwell v. City of Elwood*, 959 F.2d 670, 673 (7th Cir. 1992).[18]

Petitioners complain that the Fifth Circuit's pleading requirement in "failure to train" cases is too high. In fact, the requirement mirrors the standards set out by the Court in *City of Canton* and its progeny. Before bringing a *City of Canton* claim,

---

[18] *Brower v. County of Inyo*, 489 U.S. 593 (1989), upon which petitioners rely heavily (*see* Pet. Br. at 20-21), is inapposite. The issue in that case was whether the plaintiffs had properly pleaded a "seizure" within the meaning of the Fourth Amendment. Moreover, the conclusory allegations to which petitioners refer (*see* Pet. Br. at 20) were pled in support of the plaintiffs' substantive due process claim in the lower courts, not their Fourth Amendment claim, *see Brower v. County of Inyo*, 817 F.2d 540, 544 (9th Cir. 1987). This Court did not pass on the adequacy of those allegations.



an attorney must gather enough evidence to certify, as well grounded in fact, an allegation that a "policy" of "deliberate indifference" caused the constitutional violation. Evidence of a single incident does not satisfy this Rule 11 burden. *See, e.g., Rodgers v. Lincoln Towing Serv., Inc.*, 771 F.2d at 202 (where a § 1983 complaint against police department, among other things, failed to "alleg[e] a single fact that would indicate problems 'systemic in nature,'" Rule 11 sanctions were appropriate); *Brubaker v. City of Richmond*, 943 F.2d 1363, 1380 (4th Cir. 1991) (where plaintiffs had evidence only of "a single instance of alleged unconstitutional activity," sanctions were appropriate); *Gutierrez v. City of Hialeah*, 729 F. Supp. 1329, 1333 (S.D. Fla. 1990) (awarding sanctions where affidavit "consist[ed] entirely of conclusory allegations that Defendants instituted policy and custom permitting officers to use excessive force in the apprehension of suspects"). The Fifth Circuit's requirement, therefore, does not impose on plaintiffs any burden that they do not already have to bear under Rule 11 and the requirements of *City of Canton*.[19]

The Fifth Circuit's pleading requirement and Rule 11 do not impose a burden that "is impossible to meet." Pet. Br. at 24.[20]

---

[19] Moreover, the Fifth Circuit is interested in substance, not technicalities; it "will not dismiss cases until [it is] convinced that the specific allegations of the . . . complaint constitute plaintiffs' best case for" stating a claim against a government official or municipality. *Morrison v. City of Baton Rouge*, 761 F.2d 242, 246 (5th Cir. 1985); *see also, e.g., Rodriguez v. Avita*, 871 F.2d 552, 555 (5th Cir.), *cert. denied*, 493 U.S. 854 (1989).

[20] It is noteworthy that, before they filed their opposition to respondents' motion for summary judgment in the district court, petitioners had "ample opportunity to engage in full discovery" but failed to seek any evidence supporting their allegations against the municipal defendants. *See Leatherman*, 755 F. Supp. at 729 (Cert. Pet. App. 34a). Moreover, as petitioners themselves admit (Pet. Br. at 19), Rule 27(a) of the

Petitioners do not state that they have made *any* attempt to investigate similar incidents by *any* means, even by so simple a method as checking local newspapers. Other plaintiffs with analogous substantive claims have done considerably more. *See, e.g., Strauss v. City of Chicago*, 760 F.2d 765, 768 (7th Cir. 1985) (plaintiff secured statistical summaries from the Office of Professional Standards regarding complaints filed with the police department); *Kraemer v. Grant County*, 892 F.2d 686, 690 (7th Cir. 1990) (plaintiff's attorney hired a private investigator to interview defendants in an effort to determine whether they were involved in a conspiracy); *Colburn v. Upper Darby Township*, 838 F.2d 663, 672 (3d Cir. 1988) (plaintiff alleged that "Stierheim was the third person to commit suicide while in police custody at the upper Darby Township police department jail"); *Olivieri v. Thompson*, 803 F.2d 1265, 1269 (2d Cir. 1986) (plaintiff's attorney was "familiar" with other cases against Suffolk County police officers).

A lesser pleading requirement would eviscerate the sovereign immunity from *respondeat superior* liability that municipalities have always enjoyed:

> Plaintiffs could file claims whenever a police officer abused them, add *Monell* boilerplate allegations, and proceed to discovery in the hope of turning up some evidence to support the "claims" made.

*Strauss v. City of Chicago*, 760 F.2d at 768. This case is a classic example. Without any factual support, petitioners allege that the municipal defendants failed to train their officers adequately (*see, e.g.*, Amd. Cpl. ¶ 23, J.A. 37; *City of Canton*, 489 U.S. at 390), that the need for additional or different training was "so obvious" (*see, e.g.*, Amd. Cpl. ¶ 23, J.A. 38; 489 U.S.

---

Federal Rules gives courts discretion to allow limited prefiling discovery under certain circumstances.



at 390), that the municipal defendants' failure to implement the additional or different training amounted to "deliberate indifference" (*see, e.g.*, Amd. Cpl. ¶ 23, J.A. 38; 489 U.S. at 390), and was a "substantial factor or cause" of the constitutional violations (*see, e.g.*, Amd. Cpl. ¶ 23, J.A. 38; 489 U.S. at 391). Allowing this case to proceed to discovery would render meaningless the municipal defendants' immunity from *respondeat superior*.

The Fifth Circuit's pleading requirement properly applies this Court's teaching that immunity from liability must encompass immunity from suit. In qualified immunity cases, the Fifth Circuit requires that "plaintiffs . . . demonstrate prior to discovery that their allegations are sufficiently fact-specific to remove the cloak of protection afforded by an immunity defense." *Geier v. Fortenberry*, 849 F.2d 1550, 1553 (5th Cir. 1988); *see also Siegert v. Gilley*, 111 S. Ct. at 1795 (Kennedy, J., concurring) ("Upon the assertion of a qualified immunity defense the plaintiff must put forward specific nonconclusory factual allegations which establish malice or face dismissal."). Allowing mere conclusory pleadings, the court has recognized, lays "the groundwork . . . for disruption of the official's duties, and frustration of the protections and policies underlying the immunity doctrine." *Elliott v. Perez*, 751 F.2d at 1472.

For even more compelling reasons, the Fifth Circuit requires that plaintiffs' allegations against municipal defendants be based on more than a *respondeat superior* theory. As in the qualified immunity context, more conclusory pleadings would threaten to disrupt municipal functions and thereby frustrate the protections and policies underlying municipal defendants' immunity from *respondeat superior*. Unlike the qualified immunity cases, in which plaintiffs must plead around an affirmative defense, *see Gomez v. Toledo*, 446 U.S. at 640, the Fifth Circuit requires that plaintiffs bringing claims against municipalities plead facts supporting their affirmative case; that is, the standard requires only that plaintiffs plead facts showing that they may be able to

meet their affirmative burden of proving more than *respondeat superior* liability.

Applying Rule 8 and Rule 11, the Fifth Circuit correctly affirmed the dismissal of petitioners' § 1983 claim against the municipal defendants. The Court of Appeals noted that petitioners failed to allege any "facts that support the requisite allegation that the municipality engaged in a policy or custom for which it can be held responsible," *Leatherman*, 954 F.2d at 1055 (Cert. Pet. App. 2a). Petitioners' pre-suit investigation pursuant to Rule 11 (if one was done) obviously revealed the existence of neither a municipal policy of failing properly to train police officers nor a second incident of the activity about which petitioners complain from which a policy of "deliberate indifference" could be inferred.[21] Petitioners stated no claim upon which relief could be granted. Dismissal was not only proper but required.[22]

---

[21] The Andert and Leatherman incidents are not sufficiently related to meet the Fifth Circuit's pattern requirement. The Leatherman petitioners complain primarily that TCNICU officers were inadequately trained in how properly to confront family dogs, an alleged training deficiency that has nothing to do with the search of the Andert residence. To the extent that both sets of petitioners allege that TCNICU failed to train its officers on the constitutional limitations restricting the manner in which search warrants may be executed, their allegations fall far short of the pleading specificity required by *Anderson v. Creighton*, 483 U.S. at 639.

[22] Even if petitioners' complaint, which does not contain any facts supporting its allegation of municipal liability, satisfies Rule 12(b)(6)'s standards, petitioners' summary judgment materials clearly did not satisfy Rule 56's standard. In Section 1983 actions involving the defense of qualified immunity, this Court has already encouraged courts to grant summary judgment against plaintiffs without allowing them to resort to discovery. *See, e.g, Harlow v. Fitzgerald*, 457 U.S. at 818-19; *Anderson v. Creighton*, 483 U.S. at 641. Because municipalities' immunity from *respondeat superior* liability is as critical to Section 1983's policies as defendant officials' qualified immunity defenses, *see supra* p. 21, this Court's precedent dictates that a plaintiff's failure to produce any facts in support of his claim of municipal liability should not survive a Rule 56 motion even if it does survive a motion under Rule 12.



## II. A REQUIREMENT THAT, IN ORDER TO SURVIVE A RULE 12(b)(6) MOTION, A § 1983 COMPLAINT AGAINST A MUNICIPALITY MUST ALLEGE FACTS FROM WHICH A COURT CAN INFER MUNICIPAL LIABILITY DOES NOT VIOLATE THE RULES ENABLING ACT.

The Fifth Circuit's decision to affirm the dismissal of the amended complaint also comports with the Rules Enabling Act. That Act empowers this Court to "prescribe general rules of practice and procedure and rules of evidence in the United States district courts . . . and courts of appeals." 28 U.S.C. § 2072(a) (1988). These rules of procedure are invalid, however, if they "abridge, enlarge or modify any substantive right." *Id.* § 2072(b) (1988). The Fifth Circuit's pleading requirement complies with these provisions because it regulates "practice and procedure" and has only an incidental effect on plaintiffs' § 1983 rights. Petitioners' contention that the requirement unlawfully affects their substantive rights is wholly without merit.

This Court has explained that rules fall within the scope of the Rules Enabling Act if they govern the "practice and procedure" of the federal courts:

> "The test must be whether a rule really regulates procedure, -- the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them."

*Hanna v. Plumer*, 380 U.S. 460, 464 (1965) (*quoting Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941)). Because the Fifth

Circuit's pleading requirement only governs how Section 1983 claims against municipalities must be brought, rather than the substantive elements those claims must satisfy, it clearly constitutes a rule of practice and procedure within the meaning of the Rules Enabling Act.

Rules of practice and procedure nonetheless can violate the Rules Enabling Act if they "abridge, enlarge, or modify" a substantive right. All procedural rules have some effect on substantive rights. However,

> [t]he cardinal purpose of Congress in authorizing the development of a uniform and consistent system of rules governing federal practice and procedure suggests that Rules which incidentally affect litigants' substantive rights do not violate this provision if reasonably necessary to maintain the integrity of that system of rules.

*Burlington Northern Railroad Co. v. Woods*, 480 U.S. 1, 5 (1987); *see also Mississippi Pub. Corp. v. Murphree*, 326 U.S. 438, 445 (1946). As long as the Rule "affects only the process of enforcing litigants' rights and not the rights themselves," *Burlington Northern*, 480 U.S. at 8, it does not violate the Rules Enabling Act's substantive rights proviso.

This Court recently confirmed that Rule 11 is fully consistent with the Rules Enabling Act. In *Cooter & Gell v. Hartmarx Corp.*, this Court explained that:

> It is now clear that the central purpose of Rule 11 is to deter baseless filings in district court and thus, consistent with the Rule Enabling Act's grant of authority, streamline the administration and procedure of the federal courts.

496 U.S. 384, 393 (1990). In *Business Guides, Inc. v. Chromatic Communications Enter., Inc.*, the Court further held that: "There is little doubt that Rule 11 is reasonably necessary to maintain the



integrity of the system of federal practice and procedure, and that any effect on substantive rights is incidental." 111 S. Ct. at 934.

The Fifth Circuit's application of Rule 8 to § 1983 claims against municipalities has no more effect on plaintiffs' substantive rights than does Rule 11. The court requires only that plaintiffs plead some of the facts that they presumably learn during their Rule 11 pre-filing inquiry. *See supra* p. 22-23. The requirement's "central purpose" is, of course, to "streamline the administration and procedure of the federal courts" by denying relief to plaintiffs with factually groundless filings. *Cooter & Gell*, 496 U.S. at 393; *see Rodriguez v. Avita*, 871 F.2d 552, 554 (5th Cir.), *cert. denied*, 493 U.S. 854 (1989).

Nor does the pleading requirement "enlarge" a substantive right by extending a qualified immunity defense to municipalities. Rather, the requirement ensures that claims against municipalities are not based solely on a *respondeat superior* theory -- a theory upon, which even the petitioners admit (Pet. Br. 24), municipal liability cannot lie. The Fifth Circuit's pleading requirement does not in theory, or effect, give municipalities a qualified immunity from suit; once a plaintiff pleads some facts from which municipal liability can be inferred, the plaintiff's case against a municipal defendant can proceed. Thus, under this Court's precedents, the Fifth Circuit's application of Rule 8, like Rule 11, fully complies with the dictates of the Rules Enabling Act.

## III. THE CLAIMS ARISING OUT OF THE ANDERT SEARCH ARE COLLATERALLY ESTOPPED.

Although the Fifth Circuit did not decide the issue, the Andert petitioners' claim must fail for another reason; they are estopped from bringing any of their challenges in this Court. In their statement of facts, the petitioners fail to mention that the same

seven persons who are the "Andert petitioners" in this Court[23] sued two police officers, Greg Bewley, who allegedly assaulted Mr. Andert, and Larry Traweek, who supervised the search of the Andert residence, in *Andert v. Bewley* for "the same police activity with which the court dealt as to these persons in *Leatherman*." (Grapevine Cert. Opp. App. 1).

A jury trial was held on the same allegations at issue here. At the conclusion of petitioners' evidence, the trial court granted Officer Traweek a directed verdict and also sustained his claim of qualified immunity. *Id*. (Grapevine Cert. Opp. App. 6). The case against Officer Bewley went to the jury. In answer to special interrogatories, the jury found that petitioners failed to prove that the officer had used force that was excessive under the circumstances. The jury (and court) also sustained Bewley's qualified immunity defense. *Id*. (Grapevine Cert. Opp. App. 7). Petitioners have not appealed from *Andert v. Bewley*.

Except for the fact that the case against the officers was separately tried, this case is precisely equivalent to *City of Los Angeles v. Heller*, 475 U.S. 796 (1986). As in *Heller*, the jury found that the officers did not engage in a constitutional violation and thus, as in *Heller*, petitioners' claims are barred. Accordingly, even if it is assumed that the local governments did fail to train the officers adequately, it is "quite beside the point," given the findings in *Andert*. *See id*. at 799.

The difference in procedural postures between this case and *Heller* is inconsequential. In *Allen v. McCurry*, 449 U.S. 90 (1980), this court explained that, "[u]nder collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first

---

[23] *Compare* Petitioners' Brief at p. 4 *with* the Memorandum Opinion and Order in *Andert v. Bewley* (Grapevine Cert. Opp. App. 1).



case." *Id*. at 94.[24] Clearly, then, the fact that the finding was made in a separate case does not change the result of *Heller*. The Lealos/Andert claims are therefore barred and need not be considered.

---

[24] In *Allen*, the other court was a state court. However, under *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313 (1971) these principles apply with at least equal force to a federal judgment.

## CONCLUSION

Because petitioners' amended complaint fails to state a claim upon which relief can be granted, respondents respectfully request that this Court affirm the Fifth Circuit's decision in *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 954 F.2d 1054 (5th Cir. 1992), in all relevant respects.

Respectfully submitted,

*Of Counsel*
DIXON W. HOLMAN
CHIEF, CIVIL DIVISION
VAN THOMPSON, JR.
ASSISTANT DISTRICT ATTORNEY,
TARRANT COUNTY, TEXAS
Justice Center
401 West Balknap
Fort Worth, Texas 76196
(817) 884-1400

BRETT A. RINGLE
(Counsel of Record)
ERIC J.F. REDWINE
JONES, DAY, REAVIS & POGUE
2300 Tramell Crow Center
2001 Ross Avenue
Dallas, Texas 75201
(214) 220-3939

LAURIE F. CALDER
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3627

*Counsel for Respondents Tarrant County Narcotics Intelligence and Coordination Unit, Tarrant County, Texas, Don Carpenter, and Tim Curry*

October 5, 1992